



Ottawa, Wednesday, September 25, 1991

**Appeal No. AP-89-232**

IN THE MATTER OF an appeal heard on June 24, 1991,  
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,  
c. E-15;

AND IN THE MATTER OF a decision of the Minister of  
National Revenue dated July 14, 1989, with respect to a notice  
of objection filed under section 81.15 the *Excise Tax Act*.

**BETWEEN**

**DOMINICANA DE AVIACION**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. As a licensed air carrier during the relevant period, Dominicana de Aviacion is liable for the transportation taxes imposed under the *Excise Tax Act*. This liability imposed by the *Excise Tax Act* cannot be altered by an agreement with a third party.

W. Roy Hines  
W. Roy Hines  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-89-232**

**DOMINICANA DE AVIACION**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*This is an appeal by Dominicana de Aviacion (Dominicana) from a decision of the Minister of National Revenue dated July 14, 1989, confirming an assessment. The assessment covered the period of December 1, 1984, to September 30, 1986, resulting in a total amount owing of \$102,824.46. From this amount, a credit of \$16,955.00 was given for monies paid by a flight charterer on behalf of the appellant, reducing the amount owing to \$85,869.46.*

*The appellant objected to this by Notice of Objection dated April 23, 1987, on the basis that its tour wholesalers, under agreements, would make direct payments to Revenue Canada of all air transportation taxes collected or collectible on Dominicana's behalf. Also, one of the tour wholesalers had ceased business without remitting the tax due and, on these grounds, it would be inequitable to hold Dominicana liable for the outstanding taxes. By Notice of Decision dated July 14, 1989, the assessment was confirmed, which decision was appealed to the Tribunal on October 10, 1989.*

**HELD:** *The appeal is dismissed. As a licensed air carrier during the relevant period, Dominicana is liable for the transportation taxes imposed under the Excise Tax Act. This liability imposed by the Excise Tax Act cannot be altered by an agreement with a third party. The Tribunal does not have equitable jurisdiction that would enable it to relieve the appellant of its tax liability.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: June 24, 1991*  
*Date of Decision: September 25, 1991*

*Tribunal Members: W. Roy Hines, Presiding Member*  
*Kathleen E. Macmillan, Member*  
*Arthur B. Trudeau, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Magda de la Torre, for the appellant*  
*Linda Wall, for the respondent*

**Case Cited:** *Walbern Agri-Systems Ltd. v. The Minister of National Revenue, Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989.*

**Appeal No. AP-89-232**

**DOMINICANA DE AVIACION**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: W. ROY HINES, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
ARTHUR B. TRUDEAU, Member

**REASONS FOR DECISION**

**ISSUE AND APPLICABLE LEGISLATION**

The issue in this appeal is whether the appellant is liable under section 18 of the *Excise Tax Act*<sup>1</sup> (the Act) for air transportation taxes incurred on airline charter business in Canada.

For purposes of this appeal the relevant provisions of the Act are:

*12.(1)<sup>2</sup> There shall be imposed, levied and collected an air transportation tax, determined under section 13, on each amount paid or payable in Canada for transportation of a person by air where that transportation begins at a point in the taxation area and ends at a point outside the taxation area.*

...

*18.(1)<sup>3</sup> Every licensed air carrier is an agent of the Minister and as such shall, as provided in this section,*

*(a) levy and collect any taxes imposed by this Part for the transportation of a person by air;*

...

*(2) The tax imposed by this Part on each amount paid or payable in Canada for transportation of a person by air shall be collected by the licensed air carrier to whom payment for the transportation is made or is owing.*

...

*19.(2)<sup>4</sup> A person who, not being a licensed air carrier, sells in Canada*

1. R.S.C., 1985, c. E-15, as amended.
2. Formerly subsection 11(1).
3. Formerly section 16.
4. Formerly subsection 16(5).

*transportation of a person by air that is to be provided in whole or in part by a licensed air carrier is, in respect of the payment for that transportation and for the purposes of this Part, the agent of the first licensed air carrier who provides the transportation by air or any part thereof, as the case may be, and that person shall levy and collect on behalf of that licensed air carrier the taxes imposed by this Part and transmit them to the licensed air carrier.*

*20.(1)<sup>5</sup> Every licensed air carrier that is required by this Part to collect tax shall make each month a true return [in the prescribed form]\* of all amounts paid or payable to him by way of tax imposed by this Part for the last preceding month ...*

\*[R.S.C., 1985, c. 7 (2nd Supp.), s. 7.]

## FACTS AND EVIDENCE

This is an appeal by Dominicana de Aviacion (Dominicana) pursuant to section 81.19 of the Act from a decision of the Minister of National Revenue (the Minister), dated July 14, 1989, confirming an assessment. The assessment covered the period of December 1, 1984, to September 30, 1986, resulting in a total amount owing of \$102,824.46. From this amount, a credit of \$16,955.00 was given for monies paid by a flight charterer on behalf of the appellant, reducing the amount owing to \$85,869.46.

The appellant objected to this by Notice of Objection dated April 23, 1987, on the basis that it had agreements with its tour wholesalers under which the tour wholesalers would make direct payments to Revenue Canada of all air transportation taxes collected or collectible on the appellant's behalf. Also, one of the tour wholesalers had ceased business without remitting the tax due and, on these grounds, it would be inequitable to hold Dominicana liable for the outstanding taxes. By Notice of decision dated July 14, 1989, the assessment was confirmed, which decision was appealed to this Tribunal on October 10, 1989.

The appellant is the national airline of the Dominican Republic. During the period at issue, it was a licensed air carrier operating charter flights between Canada and the Dominican Republic pursuant to a licence issued by the Canadian Transportation Commission. The appellant also applied for, and was issued, a licence pursuant to section 15 (now section 17) of the Act, effective December 1, 1984.

Subsequent to obtaining the requisite authority, the appellant contracted with certain Canadian tour operators to provide flights to the Dominican Republic. The agreement stipulated that the tour operators would make all payments to Revenue Canada on behalf of Dominicana for the air transportation tax owed on these flights. The tour operators failed to remit to Revenue Canada all the air transportation tax owing. One of the tour operators, Servitour Canada Inc., ceased operations completely, leaving no assets, and a second operator subsequently terminated its Canadian operations.

At the hearing, the appellant was represented by Ms. Magda de la Torre, who also testified as a witness. The witness is presently the Director of Tourism for the Dominican Republic in Canada. She began her presentation by reading a letter addressed to the Tribunal from the Chairman of the airline that described the financial problems the airline is experiencing. She read from letters addressed to the

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5. Formerly subsection 17(1).

Tribunal from the El Embajador hotel and Puerto Plata Tours that described the outstanding debts of Servitour Canada Inc. She introduced a letter from the Minister of Tourism from the Dominican Republic and described how the airline and the Ministry dealt in good faith with Servitour Canada Inc. She also provided the financial statements of the airline for 1989 and 1990 and a copy of the laws governing the airline.

In response to a question from the Tribunal, the witness indicated that the flights did take place and the number of passengers involved was correctly recorded. She indicated that, since the assessment, two of the tour operators have paid their outstanding taxes and that a third will likely soon pay. She indicated, however, that the appellant will assume complete responsibility for that particular debt. She indicated that the appellant is contesting the taxes collected and not remitted to Revenue Canada by Servitour Canada Inc. that left outstanding debts with the airline and the country and that, subsequently, ceased operations completely. She acknowledged, however, that the appellant was legally liable for the debt. On cross-examination, the witness admitted that the appellant was licensed during the relevant period.

### ARGUMENTS

The appellant's representative asked the Tribunal to make an equitable ruling in favour of Dominicana based on the outstanding debts that the Canadian tour operator left with the airline and the Dominican Republic.

Counsel for the respondent argued that the appellant was a licensed air carrier and, pursuant to the Act, it is liable for the transportation tax as was admitted at the hearing. She also argued that the Tribunal must apply the applicable law and that it is not open to the Tribunal to provide equitable relief.<sup>6</sup>

### REASONS

The law in this instance is quite clear that the appellant, as the licensed air carrier involved, was the agent of the Minister for the purpose of collecting the transportation tax and was required to remit that tax to Revenue Canada. Any contract or agreement entered into between the appellant and a third party, in this case a tour operator, cannot alter this primary liability under the Act. The Tribunal notes that the appellant's representative agreed at the hearing that the appellant was liable for the outstanding taxes.

While appreciating the points made by the appellant's representative concerning the appellant's financial position and the adverse impact this liability will have on it, the Tribunal must confirm that it does not have the jurisdiction to provide equitable relief from the taxes owing. In this regard, it acknowledges the *Walbern* case cited by counsel for the respondent.

### CONCLUSION

The appeal is dismissed. As a licensed air carrier during the relevant period, Dominicana is liable for the transportation taxes imposed under the Act. This liability imposed by the Act cannot be altered by an agreement with a third party.

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6. *Walbern Agri-Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989.

W. Roy Hines  
W. Roy Hines  
Presiding Member

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Kathleen E. Macmillan  
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Member